

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

FERNAN JARAMILLO, individually and on
behalf of others similarly situated,

ORDER

12-CV-5649 (NGG) (RML)

Plaintiff,

-against-

BANANA KING RESTAURANT CORP.,
BANANA KING CORP., and ARLES VEGA,

Defendants.

-----X

NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiff Fernan Jaramillo brought this action against Defendants Banana King Restaurant Corp., Banana King Corp., and Arles Vega on November 16, 2012, under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and several provisions of the New York Labor Law, alleging failure to pay Plaintiff minimum wage, overtime, and spread-of-hours wages and failure to provide notice of wages and employment terms and conditions. (Compl. (Dkt. 1).)

After Defendants failed to answer or appear in this case, Plaintiff moved for default judgment against all Defendants on December 12, 2013. (Pl. Mot. for Default J. (Dkt. 15).) On March 31, 2014, the court referred this motion to Magistrate Judge Robert M. Levy for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1) as to both liability and damages. (Dkt. 16.)

On June 4, 2014, having conducted a damages hearing, Judge Levy issued an R&R, recommending that Plaintiff’s motion be granted, and that Plaintiff be awarded a total of \$41,832.39, plus interest, consisting of \$2,668.75 in unpaid minimum wages; \$7,739.38 in unpaid overtime wages; \$1,769 in unpaid spread-of-hours wages; \$22,585.26 in liquidated

damages; \$5,000 in damages for wage and hour notice violations; \$1,720 in attorney's fees; \$350 in costs; and prejudgment interest at the rate of nine percent (9%) per annum. (R&R (Dkt. 19).)

No party has objected to Judge Levy's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 16 ("Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with courtesy copies to Judge Garaufis and to my chambers, within fourteen (14) days. Failure to file objections within the specified time waives the right to appeal the district court's order.").) Therefore, the court reviews the R&R for clear error. See *Gesualdi v. Mack Excavation & Trailer Serv., Inc.*, No. 09-CV-2502 (KAM), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court adopts the R&R in full. See *Porter v. Potter*, 219 F. App'x 112 (2d Cir. 2007).

Accordingly, the court ADOPTS IN FULL the R&R and ENTERS default judgment against Defendants. The court AWARDS Plaintiff a total of \$41,832.39, plus interest, consisting of \$2,668.75 in unpaid minimum wages; \$7,739.38 in unpaid overtime wages; \$1,769 in unpaid spread-of-hours wages; \$22,585.26 in liquidated damages; \$5,000 in damages for wage and hour notice violations; \$1,720 in attorney's fees; \$350 in costs; and prejudgment interest at the rate of nine percent (9%) per annum.

SO ORDERED.

Dated: Brooklyn, New York
June 30 2014

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge